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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN

Arizona Corporation Commission

AZ CORP COMMISSION
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COMMISSIONER

APR 15 2002

MARC SPITZER

COMMISSIONER

DOCKETED BY

IN THE MATTER OF THE APPLICATION
OF THE ARIZONA ELECTRIC DIVISION
OF CITIZENS COMMUNICATIONS
COMPANY TO CHANGE THE CURRENT
PURCHASED POWER AND FUEL
ADJUSTMENT CLAUSE RATE, TO
ESTABLISH A NEW PURCHASED POWER
AND FUEL ADJUSTMENT CLAUSE BANK,
AND TO REQUEST APPROVED
GUIDELINES FOR THE RECOVERY OF
COSTS INCURRED IN CONNECTION
WITH ENERGY RISK MANAGEMENT
INITIATIVES.

DOCKET NO. E-01032C-00-0751

**CITIZENS' OPPOSITION TO THE
COUNTIES' MOTION FOR
FINDINGS OF FACT; OR IN THE
ALTERNATIVE, A STAY OF
PROCEEDINGS**

Citizens submits this opposition to the Counties' Motion for Findings of Fact or, alternatively, a stay until Citizens resolves its purchase power dispute with APS (the "Motion"). Although styled as a request for findings or stay, in reality the Motion is one for summary judgment which utterly fails to meet the tests prescribed for granting such a Motion. It should be denied and this matter should be promptly re-scheduled for hearing.

**I. THERE IS NO BASIS FOR THE COMMISSION TO ENTER THE
FINDINGS REQUESTED BY THE COUNTIES.**

Citing A.R.S. §§ 40-202 and 40-203, the Counties argue that this matter should be summarily dismissed with conclusory "findings" because it alleges that Citizens has failed to establish that the purchased power costs were prudently incurred. As an initial

1 matter, neither statute supports such relief. A.R.S. § 40-202 deals only with the
2 Commission's general supervisory powers over utilities and authorization to transition to
3 a competitive electric market. Far from supporting the Counties' motion to dispatch this
4 proceeding without a hearing, A.R.S. § 40-203 instead requires the Commission to
5 "determine and prescribe [rates] by order," not to summarily judge the issues without
6 hearing based upon the opinion of the Counties.

7 The Counties' opinions that Citizens (1) has not resolved the purchased power
8 dispute and (2) should not have offered legal counsel's testimony to explain fully why
9 negotiation was a superior option to litigation are only that – opinions not supported by
10 any facts. The Counties have not even offered any testimony on these subjects. Granting
11 the Motion without affording Citizens an opportunity to present its case would require the
12 Commission to ignore, among others, the following facts or disputed issues:

- 13 • There is no dispute that as of December 31, 2001, Citizens has paid
14 approximately \$99.9 million more, and by the end of this month will have paid
15 an estimated \$105.6 million more, in purchased power costs which have not
16 been recovered from customers (Exhibits CWD-6 and CWD-7).
- 17 • Pursuant to decisions dating back to 1952 and confirmed as recently as 1997,
18 Citizens is authorized to recover such undercollections after hearing and on
19 order of the Commission. See Decision No. 49438, dated October 25, 1978
20 ("This Commission shall conduct a formal proceeding for the purpose of
21 examining fuel and purchased power costs."); Decision No. 59951 dated
22 January 3, 1997 (in rejecting Citizens' request in its last rate case to suspend

1 the PPFAC, the Commission stated "The purpose of the fuel adjustor is to
2 respond to cost/price changes, decreases as well as increases.").

- 3 • There is absolutely no support in this record for a complete dismissal as
4 requested in the Motion. Even Staff and RUCO have only recommended
5 deferral, not disallowance, of \$70 million of the estimated \$106 million in
6 undercollected costs (Lee Smith Surrebuttal testimony, p. 16; Rosen
7 Surrebuttal testimony, p. 4).
- 8 • Several other issues involved in this proceeding are sharply contested including
9 the appropriate cost recovery period, the allowance for future carrying costs
10 and the appropriate treatment of costs incurred but not yet recovered under the
11 new purchased power agreement.
- 12 • Finally, Citizens has presented the testimony of economic and financial
13 experts, a former member of the California Public Utilities Commission,
14 company personnel and outside counsel demonstrating the purchased power
15 dispute was resolved and that its decisions in relation to both the power supply
16 agreements and the western power crises which triggered the unprecedented
17 cost increases were thoroughly analyzed, carefully considered and prudently
18 reached.

19 The Counties urge the Commission to ignore this testimony and evidence
20 presented by Citizens and other parties to this proceeding. In the process, the Counties
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1 ignore Arizona law governing dispositive motions.¹ Summary disposition is appropriate
2 only where “the facts produced in support of the claim or defense have so little probative
3 value, given the quantum of evidence required, that reasonable people could not agree
4 with the conclusion advanced...”. Orme School v. Reeves, 166 Ariz. 301, 309, 802 P.2d
5 1000, 1008 (1990). “[S]ummary judgment should never be entered unless the facts are
6 clear and undisputed.” Colby v. Bank of Douglas, 91 Ariz. 85, 87, 370 P.2d 56, 58 (App.
7 1962). The facts of this matter clearly support Citizens’ recovery request. But, it is
8 beyond dispute that, with regard to the legal standard to be applied to the Motion, the
9 record obviously reflects material disagreements on several issues which must be taken to
10 hearing.

11 By law, “if such a disputed fact exists, it cannot be disposed of with summary
12 judgment but must be determined at the trial.” Nyberg v. Salt River Agricultural
13 Improvement and Power District, 91 Ariz. 397, 399, 372 P.2d 727, 729 (1962). On a
14 dispositive motion, “all reasonable doubts are to be resolved in favor of trial on the
15 merits.” Hay v. Duskin, 9 Ariz. App. 599, 455 P.2d 281 (1969). Citizens has produced
16 substantial evidence demonstrating the reasonableness and prudence of its purchased
17 power costs. The Amended Application’s statements and the testimony the Counties
18 quote at pages 3-4 of the Motion highlight that fact. The Counties may state repeatedly
19 that the “purchase power dispute was never resolved,” but saying it over and over again
20

21 ¹ The Commission has adopted the Arizona Rules of Civil Procedure. See A.A.C. R14-3-101(A); R14-
22 3-106(K). The Counties motion is the functional equivalent of a motion for summary judgment under
Rule 56 of the Arizona Rules of Civil Procedure. It is, therefore, governed by controlling Arizona law
addressing dispositive motions.

1 does not make it true. Citizens' view, which is supported by expert opinion and facts, is
2 that the purchased power dispute has been resolved - correctly and prudently. Granting
3 the Counties' Motion would violate Citizens' substantive and procedural due process
4 rights and its statutory right to a hearing under A.R.S. §§ 40-203 and 40-250.

5 **A. The Counties Also Misstate the Prudence Standard.**

6 In their Motion, the Counties treat the prudence standard for assessing utility costs
7 as if it is a question of law that can be determined summarily based on a review of the
8 written testimony and filings. Rather, prudence is a fact specific inquiry and the Counties
9 also overlook the heavy burden they and other parties to this proceeding bear in
10 attempting to assert imprudence.

11 Under the Commission's rules, a prudent investment is one which "under ordinary
12 circumstances would be deemed reasonable and not dishonest or obviously wasteful."
13 See A.A.C. R14-2-103(A)(3)(1).² The rule, in fact, establishes a presumption that all
14 investments are prudent. Id. That presumption is rebuttable, but can only be set aside
15 "by clear and convincing evidence that such investments were imprudent when viewed in
16 the light of all relevant conditions known or which in the exercise of reasonable judgment
17 should have been known, at the time such investments were made." Id.; Re Arizona
18 Public Service Co., 77 P.U.R.4th 542 (Ariz. 1986). In this case, Citizens has produced
19 substantial evidence establishing the prudence of its purchased power costs and the
20
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22 ² Although the increased purchased power costs involved here are not technically an "investment," the standard set forth applies in this closely related context.

1 reasonableness of its decision to negotiate a stable, long term replacement contract rather
2 than litigate the old agreement.

3 Prudence does not require perfection or certainty of outcome. Barasch v.
4 Philadelphia Electric Co., 95 P.U.R.4th 50 (Pa. 1988). Citizens has established that it
5 carefully analyzed over several months various options to address the unique crisis it
6 faced in the western power markets and selected the best course of action - negotiation
7 and execution of a new agreement - for both itself and its ratepayers. The law requires
8 that case be evaluated after an opportunity to be heard. See, e.g., Archer-Daniels-
9 Midland Co., 704 N.E.2d 387, 399-400 (Ill. 1998) (utility engaged in prudent purchasing
10 practice by monitoring its mine contract and seeking to change it when it became
11 disadvantageous to its customers); Re Maui Electric Company, Ltd., 106 P.U.R.4th 410
12 (Haw. 1989) (utility acted prudently in negotiating power purchase contract to obtain
13 “supplemental energy” at twice the contract’s base rate, so that the utility would have
14 sufficient power to shut down units for maintenance).

15 By filing their Motion, the Counties hope the Commission will agree with their
16 principal argument that Citizens should have filed a FERC complaint against APS
17 relating to the 1995 Power Supply Agreement. The Counties (along with RUCO and
18 Staff) argue that Citizens’ failure to litigate the 1995 PSA against APS was imprudent
19 and warrants summary denial of this PPFAC application. But the prudence of a utility’s
20 failure to litigate is subject to the same fact-intensive inquiry that marks other prudence
21 determinations.

1 For example, in Re Wisconsin Public Service Corporation, 86 P.U.R.4th 357
2 (Wisc. 1987), the commission held that a utility's failure to initiate legal action to
3 challenge the repeal of a tax credit was not imprudent because its tax counsel provided an
4 opinion that the repeal of the tax credit was constitutional. "We cannot, in these
5 circumstances, require a utility to sue when its management reasonably believes that the
6 chances of winning are less than they are of losing." See also Re Southern California
7 Water Co., 57 C.P.U.C.2d 580 (Calif. 1994) (utility "not imprudent" in decision to not
8 litigate earlier; Re Alascom, Inc., 81 P.U.R.4th 320 (Alaska 1986) ("Further, the
9 Commission cannot conclude from the record...that Alascom was imprudent...in its
10 decision that litigation was unlikely to recover damages...").

11 Finally, the Counties, Staff and RUCO also overlook the substantial peril
12 associated with litigation in the 2000-2001 timeframe. Litigation would have left in place
13 a power supply agreement which was allowing significantly higher power supply costs to
14 be flowed through for an indeterminate time. Unsuccessful litigation would have
15 removed any incentive for APS/PWC to replace that agreement with the simpler, lower
16 cost and more stable agreement that was achieved. Citizens acted prudently in
17 extraordinarily difficult circumstances and deserves to have that matter determined based
18 on facts and evidence – not 20/20 hindsight or opinion offered by the Counties.

19 **B. The Counties Misconstrue Governing Law Relating to Citizens'**
20 **Attorney-Client Privilege.**

21 The Counties also argue that Citizens has acted imprudently by disclosing
22 privileged attorney-client information and advice from its FERC counsel relating to the

1 legal problems and limited chances of success of a FERC or court complaint against
2 APS. The Counties believe that waiver of the attorney/client privilege was imprudent
3 because, by disclosing the legal opinions of its attorneys, Citizens has now undercut a
4 potential FERC complaint against APS. That argument fails on several fronts.

5 First, what the Counties actually suggest is that Citizens should not have waived
6 the privilege but instead should have concealed from the parties and the Commission
7 material facts and analysis on a critical issue in this case. At page 9 of the Motion, the
8 Counties insist that the Company should have relied only on the testimony of
9 management on these issues. In fact, Citizens tried to do that, but the parties made it
10 clear that explanation would not be adequate.

11 In both the Amended Application (pages 3-6) and direct testimony (Breen Direct,
12 pages 2-7), Citizens explained the audit, analysis and discussions it undertook in relation
13 to the 1995 APS PSA and the extremely high power costs it incurred under that contract
14 commencing in June, 2000. It also stated the reasons why it decided the best course of
15 action was to negotiate a new agreement with Pinnacle West rather than litigate the old
16 contract.

17 But, in numerous data requests and testimony submitted after these filings, both
18 Staff and RUCO made it clear that they found this explanation – offered solely by
19 Company officials – to be insufficient. For example, Staff's Data Request LS 5.03 asked
20 for all "reports, correspondence, and other documents" resulting from the "in-depth legal
21 analysis" described at page 3 of the Amended Application. Staff's 5.04, 5.11, 5.14 and
22 5.23 requested various written materials from, among others, legal counsel relating to the

1 contract dispute, reasonable chances of litigation success, interpretation of system
2 incremental cost and the impact on Citizens of APS market price filing. Staff's Data
3 Request 6.25 bluntly asked "Did Citizens obtain any legal opinion regarding this dispute"
4 and requested it be supplied. RUCO issued similar data requests.

5 Citizens initially responded to most of these data requests by asserting the
6 attorney-client and work product privilege. Copies of the responses are attached as
7 Exhibit A. But, those responses left the Company with a classic dilemma. Should it
8 continue to assert the privilege and leave the parties, Commission and public with an
9 incomplete picture as to its likelihood of success and the strong reasons which had
10 compelled it to negotiate a new, stable agreement to bring an end to the high power
11 costs? Or, should it waive the privilege so all concerned would have a complete and
12 accurate basis upon which to judge its actions and assess the potential futility of the Staff
13 and RUCO recommendations? Citizens chose the latter course of action, rather than as
14 the Counties suggest concealing from the Commission and the parties the whole truth.
15 There certainly is nothing imprudent about that decision nor the decision to waive the
16 attorney client privilege. Also, the parties are in no position to complain about that
17 decision, when it was their own questions, prudence arguments and testimonial positions
18 which forced it.

19 Basically, the Counties contend that Citizens should have ignored the advice of its
20 own FERC lawyers and filed a complaint against APS anyway. That argument is absurd
21 - Citizens would have been imprudent had it not followed the advice of its FERC
22 attorneys. That argument also ignores the fact that a potential FERC complaint against

1 APS faces substantial legal hurdles (as explained by Mr. Flynn) that justified
2 renegotiating the 1995 PSA. Hiding the advice of its FERC counsel (as the Counties
3 suggest) does not change the fact that a FERC or court complaint is fraught with legal
4 problems, uncertainties and substantial potential harm.

5 On the issue of waiving the attorney-client privilege, the Counties argue at pages
6 9-10 of their motion that Citizens could have filed Mr. Flynn's testimony under seal and
7 prevented APS from reviewing it. The Counties contend that Citizens could have waived
8 the attorney-client privilege under seal to Staff, the Commissioners and the intervenors,
9 but kept the privilege intact against APS. The Counties, however, cite no authority in
10 support of that argument and, in fact, the cases they cite affirmatively indicate that cannot
11 be done.

12 Under Ninth Circuit law, "disclosure to one adversary waives the privilege as to
13 all other adversaries." United States v. Family Practice Associates of San Diego, 162
14 F.R.D. 624, 626-627 (S.D. Cal. 1995).³ Put simply, Citizens "may not pick and choose
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17 ³ This case involved an investigation by the Department of Justice following a qui tam complaint filed by
18 a private party relating to alleged Medicare fraud by the defendant. During the government's
19 investigation, the defendant submitted a confidential report prepared by its attorneys to the DOJ in an
20 effort to forestall the investigation. The defendant then attempted to assert the attorney-client privilege in
21 a lawsuit filed against the private party. The defendant attempted to prevent DOJ from disclosing the
22 privileged report. The District Court ruled that the attorney-client privilege was waived as to all
adversaries: "*The report was sent to an entity that one can only view as an adversary. The Government
and the DOJ were conducting an investigation and the report was submitted to either forestall action by
the government or receive lenient treatment. The defendants were the target of an investigation, and, as
such, can only be seen as an adversary...Disclosure to one adversary waives the privilege as to all other
adversaries. Once the report was sent to the Government and/or DOJ, the privilege was waived as to
that adversary and to all other adversaries. The defendants may not pick and choose which adversaries
will be privy to such disclosures...It would be unfair to allow the defendants to select which adversaries
they will allow access to the report.*" 162 F.R.D. at 626-627.

1 which adversaries will be privy to such disclosures.” Id. See also McMorgan &
2 Company v. First California Mortgage Co., 931 F.Supp. 703, 709 (N.D. Cal.
3 1996)(“Once a party has disclosed work product to an adversary, it waives the work
4 product doctrine as to all other adversaries”); In Re: Worlds of Wonder Securities
5 Litigation, 147 F.R.D. 208, 212 (N.D. Cal. 1991)(“The officer-defendants may not pick
6 and choose to which adversaries they will reveal documents”); Westinghouse Electric
7 Corp. v. Republic of the Philippines, 951 F.2d 1414 (3rd Cir. 1991). The alternate course
8 of action suggested by the Counties is simply not legally supportable.

9 It also is not practical. If Mr. Flynn’s testimony had been filed under seal as the
10 Counties suggest, it then would have been necessary (1) to close that portion of the
11 hearing pertaining to that testimony, (2) to seal that portion of the record and (3) to issue
12 the portions of the Proposed and Final Order which related to the subject under seal. It is
13 unlikely that the Commission and parties would have been comfortable with such unusual
14 procedures on such an issue. In any event, as explained previously, those procedures
15 would not have protected the material from disclosure to APS/PWC.

16 **II. THE COUNTIES STAY REQUEST SHOULD ALSO BE DENIED.**

17 Alternatively, the Counties ask that the “proceeding be stayed until such time as
18 Citizens finally resolves its purchase power dispute with APS...” (Motion, p. 12). That
19 request suffers from the same infirmities outlined above on the request for summary
20 findings. As explained, the purchased power dispute has been resolved. It’s just that the
21 Counties don’t like the resolution. In the hearing on this matter, the parties may assert
22 whatever positions they feel the Commission should adopt. But, the Counties may not


1 preempt this process by moving to stay based upon a suggested remedy to litigate the
2 1995 PSA which is very much in dispute.

3 **III. CONCLUSION.**

4 The Counties' Motion should be denied and this matter promptly re-set for
5 hearing.

6 RESPECTFULLY submitted this 15th day of April, 2002.

7 GALLAGHER & KENNEDY, P.A.

8
9 By 
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14 **Original and ten copies filed this**
15 **15th of April, 2002, with:**

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19 Phoenix, Arizona 85007

18 **COPY of the foregoing hand-delivered**
19 **this 15th of April, 2002 to:**

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20 Administrative Law Judge
21 Hearing Division
22 Arizona Corporation Commission
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Phoenix, Arizona 85007

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4 Commissioner Jim Irvin
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9 **COPIES** of the foregoing mailed
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EXHIBIT "A"

Citizens Communications
Docket No. E-01032C-00-0751
Arizona Corporation Commission's Fifth Set of Data Requests

Witness: Sean Breen

Data Request No. LS 5.03:

On p. 3 of the Amended Application Citizens describes "an in-depth legal analysis of the complex contract issues." Please provide all reports, correspondence, and other documents resulting from this analysis.

Response:

Citizens objects to this question on the basis that Staff is seeking confidential information that is protected by attorney-client privilege and work- product privilege.

**Citizens Communications
Docket No. E-01032C-00-0751
Arizona Corporation Commission's Fifth Set of Data Requests**

Witness: Sean Breen

Data Request No. LS 5.04:

Please provide any memos, reports, letters, e-mails, or other documents from Citizens personnel or legal counsel or others in addition to the response to No. 5-3 regarding:

- a. the cost, length of time, and possible results of protesting the power cost billings at FERC.
- b. whether Citizens had any reasonable chance of prevailing in litigation over billings by APS that gave rise to the \$85 million.
- c. how will Citizens' customers benefit from Citizens not pursuing recovery of any of the \$85 million?
- d. the term in the Settlement in which Citizens agreed not to protest the Pinnacle West market-based rate filing.

Response:

Citizens objects to the request for information from legal counsel on the basis that Staff is seeking confidential information that is protected by attorney-client privilege and work product privilege. For the non-confidential information requested, please see the responses to LS 5.16 and LS.5.44 for information concerning the Pinnacle West Settlement terms.

Citizens Communications
Docket No. E-01032C-00-0751
Arizona Corporation Commission's Fifth Set of Data Requests

Witness: Sean Breen

Data Request No. LS 5.11:

Please provide any memos, reports, letters, e-mails, or other documents from Citizens personnel or legal counsel or others regarding the interpretation of the System Incremental Cost in Schedules A, B, or C of the contract in force prior to May of 2000.

Response:

Citizens objects to the request for work product from legal counsel, because Staff is seeking confidential information that is protected by the attorney-client privilege and the work product privilege. Please see the attached letters: 1) March 23, 2000 letter to Jack Davis of APS/PWEC; 2) April 17, 2000 letter to Daniel McCarthy of Citizens; and 3) April 24, 2000 letter to Jack Davis. These letters are not confidential and address the interpretation of System Incremental Cost in the former Power Service Agreement and its Service Schedules.

Citizens Communications
Docket No. E-01032C-00-0751
Arizona Corporation Commission's Fifth Set of Data Requests

Witness: Sean Breen

Data Request No. LS 5.14:

Please provide any memos, reports, letters, e-mails, or other documents from Citizens personnel or legal counsel or others regarding whether Citizens could protect itself from the possibility of being charged more than APS' incremental costs for its own units for any or all of its contract schedules.

Response:

Citizens objects to this request in its entirety because "whether Citizens could protect itself" calls for a legal opinion. Citizens objects to this question on the basis that Staff is seeking confidential information that is protected by attorney-client privilege and work product privilege.

Citizens Communications
Docket No. E-01032C-00-0751
Arizona Corporation Commission's Fifth Set of Data Requests

Witness: Sean Breen

Data Request No. LS 5.23:

Please provide any memos, reports, letters, e-mails, or other documents from Citizens personnel or legal counsel or others, either internal to Citizens or to others, regarding the potential impact on Citizens of the market-pricing filing.

Response:

Citizens objects to this question as it relates to legal counsel on the basis that Staff is seeking confidential information that is protected by attorney-client privilege and work-product privilege. Please see the response to LS 5.16 for non-confidential information on the potential impact of the market-rates filing.

Citizens Communications
Docket No. E-01032C-00-0751
Arizona Corporation Commission's Sixth Set of Data Requests

Witness: Sean Breen

Data Request No. 6.25:

Did Citizens obtain any legal opinion regarding this dispute? Please provide any legal opinions, filings, analyses, internal memos, e-mails or other communications within Citizens or to any other entities regarding this dispute.

Response:

Citizens objects to this request as Staff is seeking confidential information that is protected by attorney-client privilege and work-product privilege.

**CITIZENS COMMUNICATIONS COMPANY
ARIZONA ELECTRIC DIVISION'S RESPONSES TO THE
RESIDENTIAL UTILITY CONSUMER'S OFFICE
FOURTH SET OF DATA REQUESTS
DOCKET NO. E-01032C-00-0751
October 9, 2001**

Data Request No. 4.11:

Please provide the details of why AED concluded "it was not possible to resolve the interpretation issues short of litigation" (page 3, lines 20-22 of the amended application).

Respondent: Sean Breen

Response:

Please see the response to Staff's data request LAJ-4.1 and in particular, the attached correspondence between Citizens and PWCC. These two letters clearly define the nature of the dispute over contract interpretation and underscore each parties' intent to pursue litigation, if necessary.

**CITIZENS COMMUNICATIONS COMPANY
ARIZONA ELECTRIC DIVISION'S RESPONSES TO THE
RESIDENTIAL UTILITY CONSUMER'S OFFICE
FOURTH SET OF DATA REQUESTS
DOCKET NO. E-01032C-00-0751
October 9, 2001**

Data Request No. 4.12:

Please provide an estimate of how much litigation of the power supply contract issues likely have cost AED.

Respondent: Sean Breen

Response:

Because of the complexity of the former contract, it was reasonably anticipated that litigation over the interpretation of these complex and technical contract terms would require significant time and expense to achieve resolution. No specific litigation budget was prepared, but it is not unreasonable to expect that the costs could exceed a million dollars for legal and expert witness costs. However, Citizens was more concerned with the continuing accumulation of unrecovered costs in the PPFAC bank and the implications for our customers. Citizens believes that it was critical to find a more timely resolution to the high power costs, and mitigate the effects on its customers. In Citizens' view, the risk of exposing its customers to greater significant costs was a not a risk worth taking in light of the circumstances of the dispute.

**Citizens Communications
Docket No. E-01032C-00-0751
RUCO's Fifth Set of Data Requests**

Witness: Sean Breen

Data Request No. 5.5:

As noted in answer to RUCO Data Request No. 4.27, when Citizens received the April 10, 2001, letter from APS stating that APS would not be responding to Citizens' informal data requests, did Citizens consider filing a formal complaint at FERC with regard to the contract dispute so that Citizens would have had a formal right to do discovery on APS? If "yes", please explain why it did not file the complaint, if "no", why not?

Response:

Citizens considered, but decided against, such a filing. At the time of the April 10 letter, Citizens and APS/PWEC were attempting to find resolution of the issues, after having engaged in an extended period of intense discussions. Citizens' immediate concern was to find a way to mitigate the impact of the high power costs on its customers.